

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Gray Davis, Governor



(Approved December 9, 2003)

ACUPUNCTURE BOARD MEETING MINUTES

September 23, 2003
The Greg Gorges Conference Room
Sacramento, CA. 95825

Full Board Meeting
September 23, 2003

MEMBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Chair
Michael Eng
Shari Asplund, Vice-Chair
Joan C. Chang, L.Ac.
Justin Tin

STAFF PRESENT

Marilyn Nielsen, Executive Officer
Don Chang, Legal Counsel
Janelle Wedge, Administrative Coordinator
Nancy Molinar, Education Coordinator
Christie Dohring, Examination Coordinator
Helen Gathercole, Administrative Technician

MEMBERS ABSENT

Min M. Chang

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (P.Zhong-Fong, Chair)

Chair Pei Li Zhong-Fong called the Acupuncture Board meeting to order at approximately 8:20 a.m. Roll was taken, a quorum was not established. Don Chang, Legal Counsel stated that the Board could meet as a committee and make recommendations until such time a full Board quorum could be established. The Board proceeded to review report items only until Justin Tin arrived at 8:30 a.m. and a quorum was then established.

2. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions

3. Chair's Report – Pei Li Zhong-Fong

Ms. Zhong-Fong reported that Ms. Nielsen, Shari Asplund and herself attended the Little Hoover Commission (LHC) Advisory Committee meeting on August 27, 2003. Ms. Zhong-Fong stated that the LHC had some issues concerning the drug/herb interaction and diagnoses, and rescheduled their October public hearing for September 25, 2003. She added this would allow the Board's sub-committees additional time to make their recommendations and report at the next hearing.

4. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen indicated there was nothing to report or issues to discuss at this time.

5. Approval of July 14, 2003 Meeting Minutes

**MICHAEL ENG MOVED AND SHARI ASPLUND SECONDED THE
MOTION TO APPROVE THE JULY 14, 2003 MINUTES AS
AMENED
PASSED UNANIMOUSLY**

6. Administrative Business – (Discussion/Action)

a. Proposed Regulatory Amendment to Title 16, California Code of Regulations (previously noticed in California Regulatory Notice Register #Z-03-0570-10, publications date of May 30, 2003) as follows:

Ms. Zhong-Fong reported that at the July Board meeting the Board took Action to extend the comment period on the proposed regulatory amendment until August. Comments and recommendations were received from Tom Haines, Pacific College of Oriental Medicine (PCOM) and Brian Fennen, Council of Acupuncture and Oriental Medicine Associations (CAOMA).

Tom Haines stated the regulations were fine but not organized. His recommendations would be structural in nature and more compatible to apply to curriculum. Mr. Haines provided the Board with examples of case management, the California approval process, organization for curriculum and acupuncture and Oriental medicine treatment overlapping herbal theory. Mr. Haines submitted his additional recommendations and believes that his recommendations were consistent with the Board's.

Brian Fennen reviewed CAOMA's recommendations and explained the items outlined that were previously submitted to the Board. Mr. Fennen explained, the adoption of these recommendations would help to assure that the Acupuncture Board is following the specifics and generalities recommended by the Competencies Task Force.

Public Comment: Lixin Huang (ACTCM), thanked the Board for their work on proposed regulations, and indicated it would be essential that the Clean Needle Technique (CNT) competency of graduating students be verified before they start practicing, and by standardizing CNT requirements, this would reduce the risk to the public safety.

The Board members overviewed all the submitted recommendations and adopted the proposed amendments as follows:

- 1. Amend Section 1399.415 - to designate January 1, 2005, as the effective date to implement the 3,000-hour curriculum requires, which is in compliance with Business and Professions Code Section 4939.**

**JOAN CHANG MOVED AND MICHAEL ENG SECONDED THE
MOTION TO ADOPT THE CALIFORNIA CODE OF
REGULATIONS SECTION 1399.415 AS PROPOSED.
PASSED UNANIMOUSLY**

- 2. Amend Section 1399.416 – to require foreign-trained applicants to have transcripts for evaluation by a foreign credential evaluation service.**

**JOAN CHANG MOVED AND MICHAEL ENG SECONDED THE
MOTION TO ADOPT THE CALIFORNIA CODE OF
REGULATIONS SECTION 1399.416 AS PROPOSED.
PASSED UNANIMOUSLY**

3. **Add Section 1399.434 – defines the new curriculum standards and breaks down the 3,000 curriculum hours to seven didactic categories in addition to clinical practice.**

**JOAN CHANG MOVED AND MICHAEL ENG SECONDED THE MOTION TO ADOPT THE EXECUTIVE COMMITTEE'S RECOMMENDED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS SECTION 1399.434, AND AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH A FIFTEEN DAY NOTICE FOR THE AMENDMENTS AND FILE THE RULEMAKING PACKAGE WITH OFFICE OF ADMINISTRATIVE LAW IF NO NEGATIVE COMMENTS ARE RECEIVED DURING NOTICE PERIOD. ANY NEGATIVE COMMENTS RECEIVED WILL BE HELD TO DISCUSS WITH THE MEMBERS AT THEIR DECEMBER 9, 2003 BOARD MEETING.
PASSED UNANIMOUSLY**

4. **Add Section 1399.435 – to require satisfactory completion of at least two academic years of education at the baccalaureate level as a prerequisite into the professional program.**

**PEI-LI ZHONG-FONG MOVED AND SHARI ASPLUND SECONDED THE MOTION TO ADOPT THE CALIFORNIA CODE OF REGULATIONS SECTION 1399.435 TO ADOPT THE EXECUTIVE COMMITTEE'S RECOMMENDED AMENDMENTS TO THE PROPOSED CURRICULUM REGULATIONS, AND AUTHORIZE THE EXECUTIVE OFFICER TO INCLUDE THIS SECTION IN THE FIFTEEN-DAY NOTICED FILED.
PASSED UNANIMOUSLY**

5. **Amend Section 1399.436 – clarifies the curriculum outlined in this section applies to students who enroll in an approved educational training program on or before December 31, 2004.**

**SHARI ASPLUND MOVED AND MICHAEL ENG SECONDED THE MOTION TO ADOPT THE CALIFORNIA CODE OF REGULATIONS SECTION 1399.436 AS PROPOSED.
PASSED UNANIMOUSLY**

b. Business and Professions Code Section 4934.1 – Study and Evaluation Requirements of the Little Hoover Commission – Board Committee Recommendations

1. Scope of Practice (Committee Members: P. Zhong-Fong & M. Eng)

Ms. Zhong-Fong reported that the Scope of Practice (SOP) there are some issues relating to enforcement and insurance third party reimbursement because “diagnosis” referrals for diagnostic imaging and laboratory tests was not defined in law. The Legal Opinion 93-11 concluded that the acupuncturist has the legal authority to diagnose prior to treatment and also to refer patients for X-Rays, blood, and laboratory tests. The committee finds that the Legal Opinion’s discussion is clear and supports the Board’s regulatory proposal to add “diagnosis” into the B&P Code sections 4937. Ms. Zhong-Fong states the committee recommends that the legal opinion should be updated to reflect changes in legislation. In addition, the Board’s name does not accurately describe the full scope of practice and notes that acupuncture is one of the modalities of Oriental Medicine and its effective practice is based on the principles of Oriental Medicine. Therefore the recommendation is to change the Board’s name to the “California Board of Acupuncture and Oriental Medicine.

Public Comment: Will Morris, Emperor's College of Traditional OM, commented on the Board's possible title of "Oriental Medicine" and the lack of integration between acupuncture and herbal programs, resulting in lower clinical hours in practice for the herbal component, which reduces the confidence in respect to herbal prescribing. Dr. Reed Phillip (SCUHS), Dr. Phillip thanked the Board for including the word "diagnosis" and encourage the Board to included the terminology and provide a definition.

SHARI ASPLUND MOVED AND JOAN CHANG SECONDED THE MOTION TO ADOPT SUBCOMMITTEE'S PEI-LI ZHONG-FONG AND MICHAEL ENG'S RECOMMENDATIONS OF ADDING "DIAGNOSIS" INTO BUSINESS AND PROFESSIONS CODE SECTION 4937; UPDATING LEGAL OPINION 93-11 AND CODIFY THE SPECIFIC AREAS THAT ARE NOT IN CURRENT LAW; AND TO SUPPORT CHANGING THE BOARD'S NAME TO THE "CALIFORNIA BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE" TO MORE ACCURATELY DESCRIBE THE SCOPE OF PRACTICE OF THE LICENSED ACUPUNCTURIST IN CALIFORNIA. THE BOARD AUTHORIZED THE CHAIR AND VICE-CHAIR TO REVIEW DOCUMENTS ON DIAGNOSIS AND IF CONCUR WITH DEFINITION OF DIAGNOSIS TO INCLUDE IT IN THE SCOPE OF PRACTICE. PASSED UNANIMOUSLY

2. Educational Requirements (Committee Members: J. Chang & J. Tin)

Ms. Chang reported the Education Committee has made their recommendation for the curriculum hours for graduation. The Business & Professions Code 4939 establishes 3,000 hours for graduation effective January 1, 2005 and the Education committee supports a 4,000 hour curriculum requirement and should change the license title to "Doctor of Acupuncture and Oriental Medicine".

Public Comment: Brian Fennen, CAOMA, indicated this issue has been discussed for standardizing up to 4,000 hours and grandfathering current licenses. It is impractical and problematic to require the licensee go back and do individual education and there are weaknesses in requiring additional number of continuing education hours over the course of ten years. The continuing education providers would be required to administer exams to meet the criteria and the Board would continue to monitor the subject mater. Tom Haines, PCOM, stated the licensing examination will be different after implementing the 3,000 hours, which is based upon the 2001 occupational analysis and he suggested requiring current licenses to take and pass the California Acupuncture licensing exam and give them ten years to do so instead of requiring them to complete additional continuing education hours. Dr. Reed Phillip (SCUHS), stated the increase in hours in the education requirement will benefit the profession and public safety. The important issue is what competency does this profession have to reassure the public. Will Morris, Emperor's College of Traditional OM, indicated that an important area of concern is the clinical portion and this should be a comfortable product coming from the institutions. Mr. Morris stated there is insufficiency in many Traditional Chinese Medicine programs and this reflect in students and faculty. The effective applications of these skills are not possible within the current time frame. Dr. Reed Phillip (SCUHS) stated that in the colleges and health care fields that more specialty professions are being re-certified and the continuing education has become inadequate in maintaining competency or keeping current with the knowledge within the profession. Dr. Phillips suggests that re-certification of practitioners be part of the strategic plan.

MICHAEL ENG MOVED AND SHARI ASPLUND SECONDED THE MOTION FOR THE BOARD TO ACCEPT THE COMMITTEE REPORT ADDRESSING THE RECOMMENDATIONS ON EDUCATIONAL REQUIREMENTS. THE RECOMMENDATIONS WILL BE HELD AND

**REVISITED WHEN THE BOARD HAS MORE TIME TO REVIEW THE
ISSUE AND DETERMINE THE BEST APPROPRIATE ACTION.
PASSED UNANIMOUSLY**

3. School Approval Process (Committee Members: S. Asplund & M. Chang)

Ms. Asplund recommends the Board should retain the school approval process as a requirement for a graduate student to qualify for the licensing exam. However, the Board should review the existing regulations that govern the approval process to identify areas where the regulations can be strengthened, such as including follow-up review procedures to assure that schools maintain high standards. Also the Board should consider establishing a Memorandum of Understanding (MOU) with Bureau of Private Postsecondary and Vocational Education (BPPVE) to promote mutual cooperation and delineate specific responsibilities for each agency, eliminating redundancies in the approval process.

Public Comment: Penelope Ward, (ACAOM), reviewed the area of accreditation and defined the difference between quantitative and qualitative, and explained accreditation is qualitative through review of quality of education that is being offered. Ms. Ward indicated that ACAOM never suggested that California total replace the Acupuncture Board's approval process of schools. Ms. Ward suggests that the Board utilize the accreditation as part of the school review. Dr. Reed Phillip (SCUHS), Dr. Phillip stated that the University is happy to comply with the recommendation of the Board continuing to approve individual institutions, however, the University has obtained Western Association of Schools and Colleges (WASC) accreditation and has been exempt under BPPVE and suggests the Board use this as an option for schools because WASC accreditation standards are greater than BPPVE's. Brian Fennen (CAOMA), stated there is a weakness in the review process and the language in AB 1943 as written requires the schools to be reviewed periodically, consequently many functions of the schools are undetected.

Mr. Eng indicated he had concerns for the availability of staff or Board members for the site visits. Ms. Asplund stated this issue was in the strategic plan and they discussed expanding the professional site visit pool. Ms. Nielsen indicated at this time she had no problem with providing the Board with a qualified site visit team, however to retain this process the Board must expand the pool and establish a professionally trained site team. Mr. Eng asked if the Board was required to evaluate and make specific recommendation under SB 1951 for LHC? Ms. Nielsen indicated the Board did address this in a report to the LHC and one of those positions was that the Board would retain the school approval process.

**MICHAEL ENG MOVED AND JOAN CHANG SECONDED THE
MOTION TO RETAIN THE SCHOOL APPROVAL PROCESS AS A
REQUIREMENT FOR A GRADUATE STUDENT TO QUALIFY FOR
TAKING THE CALIFORNIA ACUPUNCTURE LICENSE
EXAMINATION. PASSED UNANIMOUSLY**

4. Use of National Examination

Ms. Nielsen reported the Board received a letter from an expert selected by LHC to review the California Acupuncture exam and they have requested specific documents from the Board. The Board will request a letter of introduction from the LHC prior to releasing any exam data to him. Ms. Nielsen stated the Board would be working with Tracy Ferrel from OER to compile the necessary data.

c. Business and Professions Code Section 4934.2 – Study and Evaluation Requirements of the Acupuncture Board

1. Comprehensive Study of Unlicensed Acupuncture Assistants

a. Evaluate Survey Results

Ms. Wedge reported that a total of 767 licensees responded to the survey from the 7,067 licensed acupuncturists. From that response, 665 said they had no assistants, 102 had one or more assistants. Based on this survey the assistant was not widely used.

b. Review Requirements of Use of Assistants in Other States

Ms. Nielsen indicated that there are minimal requirements for the State of Massachusetts Acupuncture Assistants Regulations. The regulation states the licensee shall inform the Committee of the name of any assistant employed and that they have completed training in sterilization procedures and techniques before beginning work. Ms. Nielsen states the Executive Committee will review the survey results and bring a recommendation back to the Board at the December 2003 meeting.

c. Committee Report/Recommendation (Committee Members P. Zhong-Fong & S. Asplund)

Ms. Asplund reported on a letter received from Michael Turk responding on the use of an assistant and in his letter he implies that acupuncturists should use assistants to increase effectiveness of the treatment and would be a great relief in the clinical situation.

2. Continuing Education Auditing, Consistency and Relevancy of Approved Courses

a. Results of Continuing Education Audits

Ms. Wedge reported that for the first six months of 2003 she randomly chose ten licensees for each month to audit for their continuing education. The audit had 51 responses of which, 9 were scheduled for cite and fine, 32 had CE verified, 15 yet needed to be reviewed and 4 have discrepancies and need further contact.

b. Evaluate Licensee Continuing Education Survey Results

Ms. Molinar reported the results have been collected on the continuing education survey and not all questions were answered and this survey was difficult to recap. The information provided in this report will be a useful tool for a taskforce and can offer answers in strengthening the program. Ms. Zhong-Fong suggested forming a subcommittee with herself and Joan Chang to make recommendation to the Board for evaluation and review of Continuing Education course approvals. Also schedule a task force to review CE approved courses for relevancy in January 2004.

d. Budget Updates

Ms. Nielsen reported on the 2002/2003 Budget Expenditure Report for the fiscal year end that the surplus was higher than anticipated. The Little Hoover Commission's funding was augmented for \$250,000, with a surplus of \$105,297. Ms. Nielsen indicated the new construction cost for the new office is out of last fiscal years budget. She also stated the Department of Finance has been reviewing the 12 percent reduction plan and the Department of Personnel started their preliminary steps of implementing the plan, which will affect the Board in the next few months. The Board has been advised, along with all the other agencies, that any unspecified funds in the current years cost had to be absorbed within the Board's current budget, which means the cost from employment insurance and the workers compensation insurance to implement the staff reduction plan must come from the current budget. The Department of Finance (DOF) has expressed the importance of all the agencies not to exceed their budget, and could be held liable for any overtures. Ms. Nielsen indicated she received a letter from DOF for the 2004/2005 budgets, requesting a 20 percent reduction, but at this time it would not affect the special funded boards.

e. 2004/2005 BCP – Attorney General Augmentation

Ms. Nielsen indicated that the number of Attorney General hours has increased proportionally with the increased caseload, as the result the Board has requested an augmentation of \$138,000 for the fiscal year 2004/2005 and ongoing to support the increase costs.

f. Move to New Office Site

Ms. Nielsen reported the move to the new office has been planned for November 2003 and the office will be focusing on packing and getting the new office operational by the end of November. To avoid any interruption, the exam applications will be filed and processed prior to the move. Notices will be e-mailed, posted on the website and mailed out in the general mailing notifying as to our new location address and new telephone number.

g. Scheduling of a Strategic Planning Session

Ms. Zhong-Fong suggested the Board schedule the strategic meeting on December 8, 2003 and have the Board meeting on December 9, 2003. The Board agreed.

7. Enforcement Business – (Discussion/Action)

a. Enforcement Case Report

Ms. Nielsen reported there were 22 new complaints since July 1, 2003 and the highest percentage by category was 36 percent for unprofessional conduct. Out of the new complaints 5 were forwarded to Division of Investigation, 62 cases are pending and being worked on at the Board, 25 investigations were open prior to July 2002 and are currently pending with DOI, 26 disciplinary cases are open and pending action, and there are 12 open probation cases.

8. Examination Business – (Discussion/Action)

a. August 13, 2003 Licensing Examination

Ms. Nielsen reported 606 candidates sat for the August 13, 2003 licensing exam, 396 candidates or 65.3 percent, achieved a passing score of 117 or higher, compared to the passing rate for the January 2003 examination which was 52.6 percent. The first time takers passing rate was at 81 percent, re-examinees at 47 percent and overall 65 percent.

b. Release of Exam Fail Results Reflecting Scores in Exam Plan Content Areas

Ms. Nielsen indicated commencing with the August 2003 exam, in addition to the letter sent to the candidates, the Board is also sending them with a “Notice of Failure to Pass Examination” letter which provides them a sub score for each part of the examination as a guide to the candidates in the areas requiring additional preparation for re-testing. In this notice a table displays the exam content area, the number of items asked in each content area, and the number of questions the candidate answered correctly in each area.

9. Education Business - (Discussion/Action)

a. Closure of International Institute of Chinese Medicine, (IICM) Santa Fe, NM

Ms. Nielsen reported that originally there was a site visit scheduled for IICM the first week of September 2003, however in August the Board was notified that the school would be closing at the end of August. The Board advised IICM they will need to provide the following documents: the teach-out arrangements, a list of students in the teach-out, plan of the storing of student records, a separate list of students from Santa Fe and Albuquerque campuses including the credit accrued and provide the Board with a list of graduated students from both campuses for the past 5 years. Ms. Nielsen indicated the Board has received the teach-out contract and lists of students requested from Southwest Acupuncture College in Santa Fe, New Mexico, who will provide a teach-out program for the IICM students. This teach-out program has been approved by ACAOM, the Federal Department of Education and the New Mexico Student Loan Guarantee Corporation. Southwest has submitted a request that the Board gives consideration to allow the students from the IICM’s Albuquerque campus to take the California licensing exam. Southwest argues IICM’s program at the Albuquerque campus is the same as their approved program in Santa Fe. Legal Counsel advised the Board that Business and Professions Code Sections 4938

and 4939 defines that an applicant must complete an educational and training program approved by the Board in order to qualify to set for the licensing examination. The Board concluded that considering the review, site visits and approval of the IICM Albuquerque campus never occurred per B & P Code Section 4938 and 4939, therefore, Southwest's request for approval of this campus is denied.

b. China International Medical University, (CIMU) Los Angeles, CA

Della Welch, CIMU Board Chair and Legal Counsel introduced Jianfu Jiang, President, Fredna Gibson, Student Body Chair, and explained Dr. Jonathan Wu from Alhambra Medical University, was ill and could not attend the today meeting. Ms. Welch stated since the last Board meeting on July 14, 2003 the Board had concerns for CIMU financial stability. The school has been proactive in seeking investors and negotiated a management agreement with Dr. Wu. Dr. Albert Hua and Dr. Jiang would continue as President and Vice President and receive a salary, in addition Dr. Wu would serve on the Board. The Board requested clarification in writing from CIMU by October 30, 2003, about the Management Agreement between CIMU and Wu, how does it affect the corporate structure of CIMU and responsibility of Board of Directors (Legal Counsel's questions), and a copy of the Board of Directors minutes wherein they adopted the Management Agreement. The Board may conduct another site visit within a year. Ms. Welch stated that CIMU would comply with the entire Boards request and any other information that the Board may require. Ms. Zhong-Fong indicated that the Board might conduct another site visit within a year.

c. Meiji College of Oriental Medicine, Berkeley, CA

Mr. Chang, legal counsel, indicated the issue is whether or not Meiji College has made sufficient changes to the school that can be accessed as a different entity. Kurt Heppler staff counsel stated after a careful evaluation of the changes at the college he reached the conclusion that the college did provide education and training but the changes did not sufficiently warrant reapplication, however, the Board has the authority to conduct an on-site evaluation of the College to determine the capability of the College to provide adequate acupuncture training and education. Ms. Zhong-Fong asked the members from Meiji College to introduce themselves for comments at this time. Ken Klucsor, President and CEO, Clairmarie Levine, Board of Directors and 3rd year student, and Brian Fennen Consultant, stated that Meiji would like to invite the Board to attend ACAOM's site visit scheduled for October 9-11, 2003. Ms. Nielsen indicated that she would like to arrange for a representative to attend and thanked Mr. Klucsor for the invitation. Brian Fennen asked the Board what was the status of the Board recognizing Meiji College's name change to Acupuncture and Integrative Medicine College. Mr. Chang stated the Executive Officer has the authority to recognize the new name and will send a letter acknowledging such.

10. Public Comment Period: Susanna Rah, Stanton University, stated that the school has sent in their application for a site visit, Ms. Zhong-Fong indicated that the EO will review the application and respond to the school.

The Board rescheduled the December Board meeting from December 1 and 2 to December 8 and 9, 2003.

11. Adjournment

Acupuncture Board meeting adjourned at approximately 4:50 p.m.